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July 11, 1994

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: GN Docket No. 93-252

Dear Mr. Caton:

Transmitted herewith for filing with the Commission are an original and four copies of the "Reply Comments of the Bell Atlantic Companies" on the Commission's Further Notice of Proposed Rulemaking in this proceeding.

Should you have any questions with regard to this matter, please communicate with this office.

Very truly yours,

John T. Scott, III

John T. Scott, III

Enclosures

cc: Chief, Mobile Services Division, CCB
Deputy Chief, Land Mobile and Microwave Division, PRB

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of Mobile Services	)	

REPLY COMMENTS OF THE BELL ATLANTIC COMPANIES

The Bell Atlantic Companies ("Bell Atlantic"), by their attorneys and pursuant to Section 1.415 of the Commission's Rules, hereby submit reply comments on the Commission's Further Notice of Proposed Rulemaking ("Further Notice") in this proceeding (FCC 94-100, released May 20, 1994).

The record fully supports Bell Atlantic's position in its initial comments that the Commission should harmonize rules for all commercial mobile radio service ("CMRS") providers including Personal Communications Services ("PCS"), and not just modify its Part 90 rules. Bell Atlantic supports several specific technical proposals advanced by the commenters because they will achieve the CMRS-wide parity mandated by Congress in the Budget Act.

The commenters almost unanimously oppose the implementation of a spectrum aggregation cap, challenging the factual support for such a cap and demonstrating the administrative complexities it would entail. Instead of an

overarching spectrum cap, the Commission should adopt Bell Atlantic's proposal to place ownership limits on Specialized Mobile Radio ("SMR") licensees, parallel to the limits on other broadband services.

I. THE RECORD DEMONSTRATES WHY THE COMMISSION MUST FOCUS ON ALL CMRS RULES INSTEAD OF ONLY PART 90.

It is clear from the comments in this proceeding that the Further Notice only begins to address the real parity concerns underlying the Budget Act. The record supports Bell Atlantic's position that the Commission should move beyond merely making modifications to its Part 90 rules and also consider PCS.[1] As the Commission endeavors to rewrite its rules, it must work to ensure its rules will further equalize competition in the entire CMRS marketplace, not just certain segments.

Many comments echo Bell Atlantic's concern and join it in requesting that the regulatory disparities between Part 22 and Part 24 be removed to permit both cellular and PCS maximum freedom to compete and serve the changing needs of their customers. McCaw notes that the Commission's Part 24 PCS rules provide

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[1] See Comments of Bell Atlantic at 2-8. Southwestern Bell Corp. ("SBC"), among others, agrees that this proceeding must harmonize the rules for cellular, SMR and PCS: " Because the Commission has specifically crafted the regulation of ESMR and PCS to foster competition with cellular providers, the Congressional directive of parity regulation for substitutable, competitive services clearly should be applied to cellular, PCS and ESMR services." SBC's Initial Comments at 3. GTE agrees that this proceeding "offers a unique opportunity for the Commission to concentrate as well as leveling the playing field between PCS operators (Part 24) and all other CMRS providers." Comments of GTE at 4.

considerably more flexibility in design and operation than any other CMRS rules, and argues that the Commission should extend this flexibility to all CMRS licensees.[2] GTE calls for removal of the significant disparities in existing rules for PCS and cellular under which PCS carriers have substantially greater freedom to offer private and fixed services than do cellular carriers.[3] CTIA also urges the Commission to give Part 22 services the same regulatory flexibility as PCS licensees.[4] Vanguard Cellular argues that the Commission's technical and operational rules should be consistent with its PCS rules because PCS promises to compete with cellular, SMR, and other mobile services, and consistent rules will foster competition.[5] Bell Atlantic agrees.

As these comments demonstrate, this is the proceeding to coordinate all of the mobile services rules in order to permit all CMRS providers to compete on an equal basis. If the Commission waits until after the advent of PCS to implement a symmetrical regulatory scheme for all mobile services, or fails to initiate such parity at all, it risks imbedding an anticompetitive imbalance between all mobile services. Moreover, Congress directed that CMRS-wide parity be addressed by August 1994 (Bell Atlantic Comments at 2-7). Deferring removal of the disparities identified by Bell Atlantic, GTE, McCaw and others would not discharge the

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[2] Comments of McCaw Cellular Communications, Inc. at 7-8.

[3] Comments of GTE at 4-6, 12.

[4] Comments of the Cellular Telecommunications Industry Association at 2.

[5] Comments of Vanguard Cellular Systems, Inc. at 9.

Commission's mandate from Congress.

In addition, the Commission must harmonize many of the technical and operational rules for SMR and cellular. Several commenters make specific proposals to equalize the Commission's Part 22 and Part 90 rules. Bell Atlantic supports proposals by SBC and GTE to bring certain technical rules for SMR and cellular systems into conformity.[6] SBC correctly notes that current rules allow widely different power limits for cellular and SMR systems, and urges the Commission either to reduce power limits for SMR systems or to allow cellular providers to increase their base station power to 1000 watts ERP. As SBC correctly shows, cellular providers will be at a competitive disadvantage if they have to construct more base stations because of power limitations, resulting in higher costs for cellular service. Other inconsistent technical requirements will likewise impose differential costs on SMR and cellular providers. Because these differences in the cost of service would result in competitive asymmetries, the Commission should conform these standards for all CMRS providers.

McCaw and CTIA join Bell Atlantic in advocating that all mobile services providers should be able to offer the same types of services.[7] McCaw emphasizes that unless all competitors in the mobile services marketplace are able to offer

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[6] SBC's Initial Comments at 11, GTE Comments at 11-12. Accord, NYNEX Comments at 3; Comments of New Par at 7-9 (discussing benefits of equivalent power limits for cellular and SMR.) Equalizing power limits also was supported by the Personal Communications Industry Association (PCIA Comments at 12).

[7] Comments of Bell Atlantic at 5-8; Comments of CTIA at 2-3; Comments of McCaw at 18.

both private mobile radio service ("PMRS") and CMRS, some competitors will not be able to create service packages and respond to customer needs and preferences.[8] Here again, disparity in regulatory flexibility between providers will disadvantage some providers and hurt competition at the expense of opportunities for consumers.

As Bell Atlantic argued in its comments, changes to the Commission's Part 22 and Part 90 rules are not only required by Section 332 of the Act but are also important to achieve a unified regulatory structure.[9] If the Commission takes the additional step of aligning Part 22 and Part 90 with its PCS rules, the Commission will have made significant progress toward fulfilling its statutory mandate and promoting competition.

II. THE COMMISSION SHOULD ADOPT OWNERSHIP LIMITS ON WIDE-AREA SMR LICENSEES INSTEAD OF A GENERAL CMRS SPECTRUM CAP.

The record in this proceeding provides no support for an overarching spectrum cap on all CMRS spectrum. Like Bell Atlantic, the overwhelming majority of commenters absolutely oppose a CMRS-wide spectrum cap.[10] The

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[8] Comments of McCaw at 19.

[9] Comments of Bell Atlantic at 13-16.

[10] Opposition to a cap cuts across all types of CMRS providers. See, e.g., Comments of GTE at 18-23; Comments of PCIA at 7-10; SBC's Initial Comments at 5-9; Comments of NYNEX at 2-4; Comments of BellSouth at 2; Comments of McCaw at 5; Comments of the Roseville Telephone Company at 3; Comments of AMTA at 28; Comments of Motorola, Inc. at 3; Comments of Dial Page Inc. at 2; Comments of Comcast Corporation at 2; Comments of RAM Technologies at 20-22.

record reveals a consensus that the proposed cap would be administratively unworkable,[11] is based on the incorrect assumption that all CMRS is substitutable,[12] is unnecessary because the CMRS market is already competitive,[13] would discourage the offering of new technology to customers,[14] and would frustrate competition by impeding carriers' entry into other mobile services.[15]

However, as Bell Atlantic demonstrated in its comments, there is a clear need for a narrower set of new ownership rules to rectify the disparity in ownership limits for providers of different broadband mobile services. Only cellular and PCS providers have specific constraints on the ownership of their respective systems. No Commission rule restricts ownership of SMR systems or cross-ownership of SMR systems and other types of services. The ownership and eligibility rules imposed on cellular and PCS have no parallel for SMR. This is a

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[11] Bell Atlantic Comments at 8-9, SBC's Initial Comments at 8-9; McCaw Comments at 15-16.

[12] SBC's Initial Comments at 5

[13] Comments of Motorola at 3-6; SBC's Initial Comments at 6, GTE Comments at 18-19; Roseville Telephone Co. Comments at 3; BellSouth Comments at 6-7.

[14] Comments of Motorola at 4; SBC's Initial Comments at 6-7; GTE Comments at 18-21.

[15] AMTA Comments at 28-31; SBC's Initial Comments at 7; GTE Comments at 18-19; McCaw Comments at 12-13; Century Cellunet Comments at 3-4.

clear asymmetry which this proceeding should correct.[16]

Bell Atlantic proposed a number of ways to redress this problem, including cross-ownership limits that would prohibit a wide-area SMR system from having more than a 5%-20% interest in a cellular or broadband PCS system in overlapping service areas.[17] Numerous parties agree that while a CMRS-wide spectrum cap is unnecessary, it is critical that the Commission adopt ownership and eligibility rules for wide-area SMR licensees.[18]

SMR systems, of course, oppose such equal treatment. Instead, SMR providers want the unfettered freedom to aggregate spectrum while their competitors cannot. For instance, Nextel entreats the Commission not to "penalize" SMR systems with the implementation of a spectrum cap because ESMR licensees must use proportionately more channels for control purposes than

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[16] In fact the FCC committed to address eligibility of SMR carriers to acquire PCS spectrum in this proceeding. Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314 (June 13, 1994) at ¶104.

[17] Comments of Bell Atlantic at 11-12.

[18] McCaw argues that where spectrum caps are adopted, they should be applied equally to all similarly situated licensees, concluding that this analysis dictates that the Commission should limit SMR, like cellular, eligibility for PCS licenses. Comments of McCaw at 6, 17-18. Southwestern Bell identifies the threat to fair competition created by the current disparity and correctly argues that imposing parallel eligibility rules will actually promote development of SMR. SBC's Initial Comments at 9-10. Sprint is in accordance, urging the Commission "to subject wide area SMRs to the same PCS eligibility rules as apply to cellular providers." Comments of Sprint Corporation at 4. NYNEX and Air Touch also support ownership limits on ESMR providers to parallel existing cross-service limits. NYNEX Comments at 7; Air Touch Comments at 7-8.

cellular systems.[19] Dial Page asks the Commission not to inhibit directly or indirectly SMR aggregation because such limits would undercut economies of scale and increase the costs of constructing digital networks.[20] There is, however, no record evidence to support these conclusory assertions. Indeed, it is hard to see how applying a 40 MHz limit would in any way constrain SMR systems, given that SMR operators are touting their ability to build fully competitive wide area networks using digital technology with far less spectrum.

Moreover, the rationale provided by Nextel and Dial Page is irrelevant to the inter-service eligibility rules proposed by Bell Atlantic. Those eligibility rules are not only appropriate to ensure that SMR systems not gain an unfair competitive advantage, but are essential to achieve symmetrical regulation and promote competition. It is difficult to imagine a situation more violative of the goals of Congress and this Commission than rules which restrict ownership of two broadband mobile services but not the third. In this connection, the Commission has already rejected Nextel's claim to preferential treatment as a new service. The Commission determined that ownership caps on an even newer service, PCS, were fully warranted. Competition commands parity, and parity commands parallel rules for SMR.

At the same time that they seek to escape aggregation limits, SMR interests ask the Commission to adopt radical changes in its rules to enable SMR

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[19] Comments of Nextel Communications, Inc. at 34.

[20] Comments of Dial Page at 4.

systems to operate exactly like cellular systems. In this proceeding, Nextel advocates changes to Part 90 licensing rules which will make it in many respects functionally equivalent to cellular services.[21] And in a related proceeding, Nextel, anticipating that those changes "would make ESMR licensing comparable to cellular licensing," actually weighs in on a variety of changes to the cellular application processing rules.[22]

SMR providers cannot have it both ways. Even though SMR systems do not now have as much spectrum as cellular systems, the potential for SMR aggregation is very real. If SMR systems aggregate as much spectrum as cellular and PCS systems, they should not be exempt from the same types of ownership limitations as these services. The Commission should therefore adopt ownership and eligibility limits on wide-area SMR to prevent an unfair advantage in the mobile services market. Moreover, these limits can and should be imposed now. As other commenters point out,[23] there is no reason why they should be delayed until the three-year transition period expires. In fact, such a delay would undercut Congress's goal of symmetrical regulation of competing services.

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[21] Comments of Nextel at 6.

[22] Comments of Nextel Communications, Inc., CC Docket No. 92-115, June 20, 1994.

[23] E.g., SBC's Initial Comments at 16-17.

CONCLUSION

The Commission has the opportunity in this proceeding to make significant progress toward promoting competition in the CMRS marketplace. It should equalize the technical and operational standards for all CMRS providers, including PCS, and adopt ownership restrictions for wide-area SMR service which parallel its existing rules for PCS and cellular.

Respectfully submitted,

THE BELL ATLANTIC COMPANIES

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